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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,376	03/30/2001	George H. Butcher III	006878-111401	5338

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EXAMINER	
BORLINGHAUS, JASON M	
ART UNIT	**PAPER NUMBER**
3693	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/823,376	BUTCHER, GEORGE H.	
	Examiner	Art Unit	
	Jason M. Borlinghaus	3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 November 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *15,17-22 and 24-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *15,17-22 and 24-33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/02/06 has been entered.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 15, 17 – 22 and 24 - 33 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Under the statutory requirement of 35 U.S.C. § 101, a claimed invention must produce a useful, concrete, and tangible result. For a claim to be useful, it must yield a result that is specific, substantial, and credible. *See MPEP § 2107.* A concrete result is one that is substantially repeatable, i.e., it produces substantially the same result over and over again. *In re Swartz, 232 F.3d 862, 864, 56 USPQ2d 1703, 1704 (Fed. Cir. 2000).* In order to be tangible, a claimed invention must set forth a practical application that generates a real-world result, i.e., the claim must be more than a mere abstraction. *Benson, 409 U.S. at 71-72, 175 USPQ at 676-77.* (Please refer to the "Interim

Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" for further explanation of the statutory requirement of 35 U.S.C. § 101.)

With respect to Claim 15, Examiner finds these claims to lack a tangible result. Examiner notes that the focus of this analysis is on the result, not the individual steps.

With respect to a tangible result, the final step of independent Claim 15 states, "deferring the payment of the repayment obligation" until a future point. As the final step of the independent claims does not produce a real-world result, only a postponement of a real-world result, the Examiner finds that there is no tangible result produced.

Dependent claims are rejected based upon their dependence from rejected claims.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 15, 17 – 22 and 24 – 33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 15 states "a requirement that the bond issuer establish revenue rates sufficient to pay the repayment obligation by the expected payment date". However,

Examiner was unable to locate within the specification support to enable a person skilled in the art to make such an assessment. Rather specification is directed toward establishing revenue rates, based upon financial projections concerning the underlying revenue stream, that, should projections hold true, will probably be sufficient to pay the repayment obligation.

Examiner is unsure how a bond issuer can establish revenue rates sufficient to pay the repayment obligation by the expected date, either from the specification or from the prior art, in general. At best, a bond issuer can establish revenue rates that probably will be sufficient to pay the repayment obligation by the expected date.

Claim 19 and 22 are rejected on the same grounds.

Further dependent claims are rejected based upon their dependency upon prior rejected claims.

Please examine all claims and, where required, correct appropriately.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15, 17 – 22 and 24 – 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims are replete with vague and indefinite language.

Claim 15 relates to a method comprising several steps of "inputting data", "determining", "meeting the payment obligation" and "deferring payment". However,

claim language leaves it unclear whether the (1) bond issuer (i.e. the user) or (2) a computer system (i.e. the system) is performing the claimed steps.

Claim 15 states "wherein the requirement that the bond issuer establish revenue rates sufficient to pay the repayment obligation by the expected payment date comprises establishing a revenue requirement based on ***a lower coverage ratio than is used for purposes of either a board policy associated with the bond or a rate covenant associated with the bond***" (emphasis added). Claim language is rendered indefinite by reference to an object that is variable. See *MPEP § 2173.05(b)*. Claim language fails to indicate what constitutes a "coverage ratio [that] is used by either a board policy associated with the bond or a rate covenant associated with a bond". As said coverage ratio could be any ratio, such claim limitation fails to define any limitations of the "revenue requirement."

Furthermore, Claim 24 states that the "coverage ratio is greater than 1" which theoretically means that the coverage ratio can be any ratio from 1 to infinity. When read in conjunction with Claim 15, it appears that the bond issuer is using a lower coverage ratio that is less than infinity, the one claimed in Claim 24.

Claim 15 also states "determining, based at least upon the input data regarding the expected payment date and the input data regarding the underlying revenue stream, ***if*** the repayment obligation will be met by the expected payment date" (emphasis added) and "to the extent that...". Such Claim language recites conditional language without sufficiently providing one of ordinary skill instructions for proceeding in the event at least one of the conditions fails. Such Claim is indefinite for failing to particularly point

out and distinctly claim the subject matter which applicant regards as the invention. Furthermore, the Claim is extremely broad as it is silent regarding what will be done if the condition fails, hence giving the claims their broadest reasonable interpretation; a reasonable alternative is to do nothing. Note also that this rationale applies to subsequent dependent claims that depend from this initial conditional statement, and/or contain a conditional limitation as language.

Claims 20 and 21 states "***objectively*** determinable event" and "***predetermined*** shortfall" (emphasis added). Claims fail to indicate from whose standpoint the event is objectively determined, or from what perspective or timeframe the shortfall is predetermined, making such adjectives indefinite and vague.

Claim 24 states ""coverage ratio is greater than 1". Is the claimed coverage ratio referring to the coverage ratio used by (1) the bond issuer (i.e. the lower coverage ratio), (2) board policy or (3) a rate covenant?

Claims 28 and 31 states "***substantially*** equal" (emphasis added) which is deemed vague and indefinite. *See MPEP § 2173.05(b).*

Dependent claims are rejected based upon their dependency upon prior rejected claims.

Please examine all claims and, where required, correct appropriately.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

> the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 15, 17 – 22 and 24 – 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grigsby (PG Pub 2002/0016758) in view of Bachmann (US Patent 6,315,196) and Official Notice.

Regarding Claims 15, 17 – 22 and 24 – 33, Grigsby discloses a method implemented by a programmed computer system for use in connection with a bond issued by a bond issuer, wherein the bond has associated therewith a repayment obligation and an underlying revenue stream (property taxes or sales taxes). (see abstract; p. 1, para. 3) comprising:

- inputting data (repayment schedule) regarding an expected payment date (such as the individual dates on said repayment schedule) for the bond. (see pp. 1 – 2, para. 13);
- inputting data (maturity date) regarding a legal maturity date (maturity date) for the bond. (see p. 1, para 8);

- inputting data regarding a requirement that the bond issuer establish revenue rates (projected revenue) sufficient to pay the repayment obligation (bond) by the expected payment date. (see p. 5, para. 61);
- inputting data regarding the underlying revenue stream (revenue streams) associated with the bond. (see p. 5, para. 61);
- determining, based at least upon the input data regarding the expected payment date and the input data regarding the underlying revenue stream, if the repayment obligation will be met by the expected payment date (such as when the obligation will not be met when the revenue stream produces "low or uncertain revenues."). (see p. 5, para. 61);
- meeting the repayment obligation by the expected payment date (repayment schedule) to the extent that the determining step determines that the repayment obligation will be met by the expected payment date (such as the individual dates on said repayment schedule). (see pp. 1 – 2, para. 13);
- wherein the revenue stream flows from a project selected from the group consisting of an airport project (airports) and sewer project (water works). (see p. 5, para. 61); and
- the bond is issued as part of a pool of bonds. (see p. 4, para. 54)

Grisby does not teach a method of deferring the payment of the repayment obligation as late as the legal maturity date to the extent that the repayment obligation is not met by the expected payment date due to the failure of the revenue stream to cover

the requirements of the repayment obligation; wherein the failure of the revenue stream to cover the requirements of the repayment obligation results from a force majure event; wherein the deferral of the payment of the repayment obligation occurs upon the occurrence of an objectively determinable event; wherein the requirement is a continuing requirement even if the repayment obligation is deferred; wherein the coverage ratio is greater than one;

Bachmann discloses a method comprising:

- deferring the payment of the repayment obligation (debt of a credit account) as late as the legal maturity date (maximum benefit duration date) to the extent that the repayment obligation (debt) is not met (unpaid) by the expected payment date (minimum payment due date) due to the failure of the revenue stream such as to cover the requirements of the repayment obligation (unable to make timely payments, such as due to unemployment). (see abstract);
- wherein the failure of the revenue stream to cover the requirements of the repayment obligation results from a force majure event (hospitalization, unemployment, disability). (see abstract);
- wherein the deferral of the payment of the repayment obligation occurs upon the occurrence of an objectively determinable (verifiable) event. (see abstract); and
- wherein the requirement is a continuing requirement even if the repayment obligation is deferred (see col. 2, line 61 – col. 3, line 10).

Examiner takes ***Official Notice*** that utilization of coverage ratios (an assessment of a borrower's capability to repay debt) and pegging of a coverage ratio at greater than 1 (establishing that incoming revenue is greater than outgoing debt); a state revolving fund program; a repayment obligation accruing interest until a principal is repaid and adding such accrued interest to the principal debt amount, such as compound interest; increasing interest rates for unpaid principal of the repayment obligations each year following the maturity date; and usage of a net revenue stream for debt calculations are old and well known in the art of financial management and debt servicing.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Grigsby by incorporating a method of deferment for repayment of the debt obligation, as disclosed by Bachmann, if parties were unable to meet the repayment obligations under the bond due to insufficient revenue streams, providing parties an further opportunity to repay and to provide protection from adverse credit ratings.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Grigsby and Bachmann by incorporating methodologies, as are old and well known in the art, as such methodologies are standard and conventional in the art of financial management and debt servicing.

Examiner's Note: The Examiner has cited particular columns and line numbers in the references as applied to the claims for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are

applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Response to Arguments

Applicant's arguments with respect to pending claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Borlinghaus whose telephone number is (571) 272-6924. The examiner can normally be reached on 8:30am-5:00pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JMB

May 13, 2007

5/14/07

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